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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| EXAMINER |
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COTTON, ABIGAIL MANDA

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| ART UNIT | PAPER NUMBER |
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1617

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/088,732 | SCHMID ET AL. | |
| | Examiner | Art Unit | |
| | Abigail M. Cotton | 1617 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 13-27 are pending in the application.

Applicant's arguments filed September 6, 2005, with respect to the rejection(s) of claim(s) 13-17 under 35 U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is being made in view of the references U.S. Patent No. 6,432,419 to Kahre et al, U.S. Patent No. 5,089,531 to Ira Weil and U.S. Patent No. 5,770,185 to Wachter et al.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13-16 and 19-22 and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,432,419 to Kahre et al, issued on August 13, 2002, in view of U.S. Patent No. 5,089,531 to Ira Weil, issued February 18, 1992.

Kahre et al. teaches a cosmetic composition having a nonionic surfactant selected from the group of alkyl or alkenyl oligoglycosides and a fatty compound of hydroxycarboxylic acid esters (see column 3, lines 35-59, and column 1, lines 30-45, in particular.) Kahre et al. further teaches that the fatty compound and nonionic surfactant may be in a ratio by weight of 40:60 to 60:40 to improve sensorial properties (see column 3, lines 36-44, in particular.) Kahre et al. also teaches that suitable hydroxycarboxylic esters are esters of malic acid, tartaric acid and citric acid, with aliphatic alcohols containing 1 to 22 carbons (see column 3, lines 15-34, in particular.) Accordingly, Kahre et al. teaches a composition having an alkyl or alkenyl glycoside and an ester of malic acid, tartaric acid or citric acid with a C₆–C₂₂ fatty alcohol, in a ratio by weight of 40:60 to 60:40, as recited in claims 13 and 19.

Regarding claims 14 and 20, Kahre et al. teaches providing an ester with aliphatic alcohols containing 6 to 18 carbon atoms (see column 3, lines 15-19, in particular.) Kahre et al. also teaches that it is preferred to use short-chain hydroxycarboxylic acids, such as malic acid, tartaric acid or citric acid, with long-chain fatty alcohols, such as cocofatty alcohol or cetearyl alcohol (see column 3, lines 29-34, in particular.)

Regarding claims 15 and 21, Kahre et al. teaches a preferred embodiment having an ester with a cocofatty alcohol (see column 3, lines 29-34, in particular), and also that alkyl oligoglucosides based on hydrogenated C_{12/14} coconut oil fatty alcohol

are preferred (see column 4, lines 30-33, in particular.) Regarding claims 25-27, Kahre et al. teaches the surfactant mixture amounts (see column 8, lines 15-65, in particular.)

Accordingly, Kahre et al. teaches the composition and process for enhancing compatibility of a composition comprising the oligoglycoside and a foam stabilizer that is an ester of tartaric, malic or citric acid with a C6-C22 fatty alcohol, and in the weight ratio as recited in claims 13-16, 19-22 and 25-27. However, Kahre et al. does not specifically teach that the hydroxyl carboxylic esters are partial esters, as recited in claims 13-16, 19-22 and 25-27, and also does not teach the specific salt forms recited in claim 16 and 22.

Weil teaches compositions incorporating a salt of a monoester of citric acid (a partial ester) that can be used in skin treatment compositions, and that impart a pleasant smoothness to the skin (see abstract, in particular.) Weil teaches that the hydrophobic group having the ester linkage to the citric acid desirably has 10 to 18 carbon atoms (see abstract, in particular), and thus teaches providing a partial ester of citric acid with a fatty alcohol group having a number of carbon atoms that falls within the limitations of the fatty alcohols recited in claims 13-16, 19-22 and 25-27. Regarding claims 16 and 22, Weil teaches that salts of the monoester that are suitable for such skin treatment compositions include alkaline earth metals and ammonium, among others (see column 10, line 60 through column 11, line 10, in particular.)

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the esters of citric acid and fatty alcohols as in Kahre et al, in the form of the specific partial esters or partial ester salts as taught by Weil, because Kahre et al. teaches the composition having fatty compounds comprising esters of citric acid with fatty alcohols that are suitable for use in cosmetic compositions, and Weil teaches that partial esters of citric acid with fatty alcohols and their salts are suitable for cosmetic compositions such as skin treatment. Accordingly, one of ordinary skill in the art would have been motivated to provide the esters of Kahre et al. in form of partial esters as taught by Weil, with the expectation of providing a composition having fatty compounds that are suitable for cosmetic use.

It is respectfully pointed out that instant claims 15 and 21 are product-by-process claims, as they recite that the components are "derived from" the fatty alcohols. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed Cir. 1985). See MPEP 2113.

Claims 19-22 and 25-27 are directed to a method of enhancing the dermatological and ophthalmic mucous membrane compatibility of a cosmetic and/or

pharmaceutical composition by adding the surfactant mixture to the composition. Since the combined teachings of Kahre et al. and Weil render the claimed composition obvious, the property of such a claimed composition will also be rendered obvious by the prior art teachings, since the properties, namely the enhancement of the mucous membrane compatibility, are inseparable from its composition. Therefore, if the prior art teaches the cosmetic composition or renders the cosmetic composition obvious, then the properties are also taught or rendered obvious by the prior art. In re Spada, 911 F.2d 705, 709, 15 USPQ 1655, 1658 (Fed. Cir. 1990.) See MPEP 2112.01. The burden is shifted to Applicant to show that the prior art product does not possess or render obvious the same properties as the instantly claimed product.

Claims 13-15, 16-21 and 23-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,432,419 to Kahre et al, issued on August 13, 2002, in view of U.S. Patent No. 5,770,185 to Wachter et al, issued June 23, 1998.

Kahre et al. teaches a cosmetic composition having a nonionic surfactant selected from the group of alkyl or alkenyl oligoglycosides and a fatty compound of hydroxycarboxylic acid esters (see column 9, lines 20-59, in particular.) Kahre et al. further teaches that the fatty compound and nonionic surfactant may be in a ratio by weight of 40:60 to 60:40 to improve sensorial properties (see column 3, lines 36-44, in particular.) Kahre et al. also teaches that suitable hydroxycarboxylic esters are esters of malic acid, tartaric acid and citric acid, with aliphatic alcohols containing 1 to 22

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carbons (see column 3, lines 15-34, in particular.) Accordingly, Kahre et al. teaches a composition having an alkyl or alkenyl glycoside and an ester of malic acid, tartaric acid or citric acid with a C₆ –C₂₂ fatty alcohol, in a ratio by weight of 40:60 to 60:40, as recited in claims 13 and 19.

Regarding claims 14, 17, 18, 20, 23, 24, Kahre et al. teaches providing an ester with aliphatic alcohols containing 6 to 18 carbon atoms (see column 3, lines 15-19, in particular.) Kahre et al. also teaches that it is preferred to use short-chain hydroxycarboxylic acids, such as malic acid, tartaric acid or citric acid, with long-chain fatty alcohols, such as cocofatty alcohol or cetearyl alcohol (see column 3, lines 29-34, in particular.)

Regarding claims 15 and 21, Kahre et al. teaches a preferred embodiment having an ester with a cocofatty alcohol (see column 3, lines 29-34, in particular), and also that alkyl oligoglucosides based on hydrogenated C_{12/14} coconut oil fatty alcohol are preferred (see column 4, lines 30-33, in particular.) Regarding claims 25-27, Kahre et al. teaches the surfactant mixture amounts (see column 8, lines 15-65, in particular.)

Kahre et al. does not specifically teach that the esters of malic, tartaric or citric acid are partial esters, as recited in claims 13-15, 16-21 and 23-27.

Wachter et al. teaches providing fat-soluble hydroxycarboxylic acid esters in topical preparations (see column 1, lines 1-15, in particular.) Wachter et al. teaches that the hydroxycarboxylic acid esters can be esters obtainable by esterification of polybasic hydroxycarboxylic acids, such as tartaric and malic acid, with fatty alcohols containing 12-20 carbon atoms, and even 12 to 18 carbon atoms, which meets the limitations recited in claims 13-14 and 19-20, and can furthermore comprise the partial esters and salts of such compounds (see column 1, lines 35-65 and column 2, lines 1-25, in particular.) Accordingly, Wachter et al. teaches providing in a topical composition, a partial ester of tartaric or malic acid with a fatty alcohol having a number of carbon atoms that meets the limitations of claims 13-15, 16-21 and 23-27.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the esters of malic acid and/or tartaric acid and fatty alcohols as in Kahre et al, in the form of the specific partial esters or partial ester salts as taught by Wachter et al, because Kahre et al. teaches the composition having fatty compounds comprising esters of malic acid/or tartaric acid with fatty alcohols that are suitable for use in cosmetic compositions, and thus topical use, and Wachter et al teaches that partial esters of malic acid and/or citric acid with fatty alcohols and their salts are suitable for compositions used for topical application to skin. Accordingly, one of ordinary skill in the art would have been motivated to provide the esters of Kahre et al. in form of partial esters as taught by Wachter et al, with the expectation of providing a composition having fatty compounds that are suitable for topical cosmetic use.

It is respectfully pointed out that instant claims 15 and 21 are product-by-process claims, as they recite that the components are "derived from" a fatty alcohol. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed Cir. 1985). See MPEP 2113.

Claims 19-21 and 23-27 are directed to a method of enhancing the dermatological and ophthalmic mucous membrane compatibility of a cosmetic and/or pharmaceutical composition by adding the surfactant mixture to the composition. Since the combined teachings of Kahre et al. and Wachter et al. renders the claimed composition obvious, the property of such a claimed composition will also be rendered obvious by the prior art teachings, since the properties, namely the enhancement of the mucous membrane compatibility, are inseparable from its composition. Therefore, if the prior art teaches the cosmetic composition or renders the cosmetic composition obvious, then the properties are also taught or rendered obvious by the prior art. In re Spada, 911 F.2d 705, 709, 15 USPQ 1655, 1658 (Fed. Cir. 1990.) See MPEP 2112.01. The burden is shifted to Applicant to show that the prior art product does not possess or render obvious the same properties as the instantly claimed product.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 13-16, 19-22 and 25-27 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,432,419 to Kahre et al, issued on August 13, 2002, in view of U.S. Patent No. 5,089,531 to Ira Weil, issued February 18, 1992.

Although the conflicting claims are not identical, they are not patentably distinct from each other because Kahre et al. claims a cosmetic or pharmaceutical composition comprising hydroxycarboxylic acid esters and alkyl or alkenyl oligoglucosides, in a weigh ratio the encompasses the range recited in the instant claims. Also, while Kahre et al. also claims specific auxiliaries or additives, the "comprising" language of the instant claims leaves the composition open to specific auxiliaries and additives. Kahre

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et al. furthermore claims hydroxycarboxylic acids having 3 to 18 carbon atoms with aliphatic alcohols having 1 to 22 carbon atoms, and thus teaches compositions that encompass the ranges recited in the instant claims. It is noted that "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955.)

Kahre et al. does not specifically teach providing partial esters or partial ester salts, as recited in the claims. However, Weil discloses that partial esters and salts of fatty alcohol esters of citric acid are suitable for cosmetic use, as discussed above, and thus one of ordinary skill in the art would have been motivated to provide partial esters in the claimed compositions of Kahre et al. based on the teachings of Weil. Accordingly, claims 13-16, 19-22 and 25-27 are not patentably distinct over Kahre et al. in view of the teachings of Weil.

Claims 13-15, 16-21 and 23-27 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,432,419 to Kahre et al, issued on August 13, 2002, in view of U.S. Patent No. 5,770,185 to Wachter et al, issued June 23, 1998.

Although the conflicting claims are not identical, they are not patentably distinct from each other because Kahre et al. claims a cosmetic or pharmaceutical composition

comprising hydroxycarboxylic acid esters and alkyl or alkenyl oligoglucosides, in a weight ratio the encompasses the range recited in the instant claims. Also, while Kahre et al. also claims specific auxiliaries or additives, the "comprising" language of the instant claims leaves the composition open to specific auxiliaries and additives. Kahre et al. furthermore claims hydroxycarboxylic acids having 3 to 18 carbon atoms with aliphatic alcohols having 1 to 22 carbon atoms, and thus teaches compositions that encompass the ranges recited in the instant claims. It is noted that "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955.)

Kahre et al. does not specifically teach providing partial esters or partial ester salts, as recited in the claims. However, Wachter discloses that partial esters and salts of fatty alcohol esters of malic and tartaric acid are suitable for topical use, as discussed above, and thus one of ordinary skill in the art would have been motivated to provide partial esters in the claimed compositions of Kahre et al. based on the teachings of Wachter. Accordingly, claims 13-16, 19-22 and 25-27 are not patentably distinct over Kahre et al. in view of the teachings of Weil.

Response to Arguments

Applicant's arguments with respect to claims 13-17 have been considered but are moot in view of the new ground(s) of rejection.

Regarding Applicant's assertion of showing unexpected results in Table 1: Table 1 of Applicant's specification does not show results that are unexpected over the combined teachings of Kahre et al and Weil or Kahre et al. and Wachter et al, and furthermore does not show unexpected results that are commensurate in scope with the claimed invention.

Regarding the scope of the claimed invention, it should be noted that evidence of any unexpected results must be reasonably commensurate in scope with the claimed invention. See, e.g., *In re Kulling*, 897 F.2d 1147, 1149, 14 USPQ2d 1056, 1058 (Fed. Cir. 1990); *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 777 (Fed. Cir. 1983).

Table 1 of Applicant's specification compares the foaming capacity and total irritation of (I) mixtures of cocoalkyl oligoglucosides with partial esters of malic or tartaric acid with lauryl alcohol (Examples 1, 2, 4 and C4), (II) mixtures of cocoalkyl oligoglucosides with a full ester of citric acid (Example 3), and (III) cocoalkyl oligoglucosides alone (Examples C1, C2 and C3). Thus, the Table 1 shows results for a comparison between, for example, a composition of a cocoalkyl oligoglucoside

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(C₁₂/C₁₄, e.g.) alone, versus a composition having a mixture of a cocoalkyl oligoglucoside (C₁₂/C₁₄, e.g.) and either tartaric acid monolauryl ester or malic acid monolauryl ester.

In contrast, the instant claims recite a mixture of an alkyl and/or oligoglycoside and a foam stabilizer that is selected from a partial ester of tartaric, malic and/or citric acid with a C₆₋₂₂ fatty alcohol. Thus, the examples of Table 1 are not commensurate in scope with the claimed subject matter because the claims broadly recite oligoglycosides and esters of acids with a range of fatty alcohols, whereas the examples shown in Table 1 are limited to a specific oligoglycoside, namely cocoalkyl oligoglycoside, and are also limited to more specific esters, namely partial esters of lauryl alcohol with malic or tartaric acid. Accordingly, as the results shown in Table 1 are not commensurate with the scope of the subject matter being claimed, the results are not sufficient to show non-obviousness of the more broadly claimed subject matter.

The data in Table 1 furthermore does not support a showing of unexpected results for the recited mixture of an alkyl and/or alkenyl oligoglycoside and a partial ester of citric, malic or tartaric over the compositions taught by Kahre et al. and Weil or Kahre et al. and Wachter et al. Weil and Wachter et al. teach partial esters of citric, tartaric and malic acid, as in the instant claims. Table 1 shows foaming and irritation results for different ratios of the same oligoglucoside (C_{12/14} cocoalkyl oligoglucoside) to the same partial ester (tartaric acid monolauryl ester) (Examples 1 and 4.) The results

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show that the decreasing the amount of partial ester with respect to oligoglucoside only slightly decreases the basic foam and foam height, and also only slightly increases the irritation. The relatively small magnitude changes appear to be within a range that would be expected to one of ordinary skill in the art, and Applicant has not provided any data that demonstrate otherwise. Thus, the results shown in Table 1 are not sufficient to overcome a rejection on the basis of obviousness over the cited references. It should be noted that a showing of unexpected results must be based on evidence, not argument or speculation. In re Mayne, 104 F.3d 1339, 1343-44, 41 USPQ2d 1451, 1455-56 (Fed. Cir. 1997)

The results of Table 1 furthermore do not support a showing of unexpected results over the composition taught by Kahre et al. Kahre et al. teaches a composition having an alkyl or alkenyl oligoglycoside, and a hydroxycarboxylic acid ester. Kahre et al. does not teach providing a specific partial ester, although the composition of Kahre et al. is interpreted as inherently comprising partial ester forms, and motivation for providing a partial ester form is furthermore suggested by Weil and Wachter et al. Table 1 shows that the tartaric acid monolaurylester of (I) (Example 1, partial ester) has the same foam height but less irritation than the citric acid dicocoyl ester of (II) (Example 3, full ester), when used with the same cocoalkyl oligoglucoside (C_{12/14} cocoalkyl oligoglucoside). However, this comparison of (I) with (II) does not constitute a controlled test of the foaming capability and total irritation of partial esters versus full esters. Not only is the extent of esterification (partial or full) changed between (I) and

(II), but the acids and alcohols tested in each example are also different (tartaric and lauryl in (I), and citric and cocoyl in (II).) While it is possible that the conversion from full to partial ester has resulted in the lower irritation score in Example 1, it is also possible that substituting tartaric acid for citric acid, or lauryl alcohol for dicocoyl alcohol, resulted in the lower irritation score.

Moreover, the irritation score and foaming capability of the citric acid dicocoyl ester/oligoglucoside mixture of Example 3 appears to be well within the ranges of those given by the partial esters/oligoglucoside mixtures of Examples 1, 2 and 4. Example 3 resulted in a foam height after 20 minutes that was the equivalent of that Example 1 and larger than the foam height after 20 minutes of Example 4. The basic foam measure of Example 3 was slightly lower than Examples 1 and 2, but greater than that of Example 4. The total irritation of Example 3 was slightly higher than Example 1, but lower than Examples 3 and 4. Moreover, the differences between Examples 1, 2, 3 and 4 in basic foam, foam height after 20 minutes and total irritation appear to be within a fairly close range of one another, and thus do not exhibit values that would be "unexpected" to one of ordinary skill in the art. Accordingly, the results shown in Figure 1 do not demonstrate unexpectedly good results for mixtures of partial esters with oligoglycosides over mixtures of full esters with oligoglycosides, and thus does not show unexpectedly good results over the teachings of Kahre et al.

With regards to Applicants arguments that the Examiner is comparing the foam height and not the stability of the foam height to determine whether a showing of unexpected results exists, the Examiner notes that all of the data presented in Table 1, which includes the basic foam, foam height, and total irritation of the composition, have been considered.

Conclusion

No claims are allowed.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Abigail M. Cotton whose telephone number is (571) 272-8779. The examiner can normally be reached on 8:30-5:00, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AMC



SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER